IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3112 of 2007

BIRBAL RAM
V/S
RAJDEEP SINGH & ANR.

Mr. GR GOYAL, for the appellant / petitioner

Mr. HEMANT JAIN, for the respondent

Date of Order : 10.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

By the impugned order, the learned trial Court has dismissed the petitioner's application for amendment of the written-statement to incorporate a plea that after filing of the suit, another premises have fallen vacant belonging to his mother, and those premises are in possession of the plaintiff, who could occupy, and therefore, bonafide necessity no more survives. The plaintiff contested that application by contending that the premises belong to his mother, and he is not dependent on his mother.

Learned trial Court has dismissed the application on the ground of delay, as the application has been filed after about six years, but then it has been observed that it is open to the defendant to cross-examine the plaintiff on this aspect of the matter. In my view, when the petitioner has been allowed to cross-examine the plaintiff

on this aspect, and if he is also allowed opportunity to lead evidence on this aspect, that would meet the end of justice without amendment being allowed.

Accordingly, the writ petition is disposed of with a further direction that the petitioner will also be entitled to lead evidence on this aspect of the matter. Trial Court is directed to proceed with the trial of the suit expeditiously.

(N P GUPTA),J.

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